STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFF-APPELLANT,

v

MARK DAVID SESSIONS,

DEFENDANT-APPELLEE.

SUPREME COURT NO. 126514

COURT OF APPEALS NO. 251836

CIRCUIT COURT NO. 03-13545-AR

DISTRICT COURT NO. 03-0293-FY

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AMICUS CURIAE SUPPLEMENTAL BRIEF
OPPOSING INTERLOCUTORY APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF THE QUESTION PRESENTED

HAS SOMEONE WHO WAS CONVICTED OF VIOLATING PROBATION "SUCCESSFULLY COMPLETED ALL CONDITIONS OF PROBATION"?

DEFENDANT-APPELLEE ANSWERS: YES
PLAINTIFF-APPELLANT AND AMICUS CURIAE ANSWER: NO

STATEMENT OF FACTS

Amicus curiae relies on the Statement of Facts presented in plaintiff's supplemental brief.

ARGUMENT

A PERSON CONVICTED OF VIOLATING PROBATION HAS NOT "SUCCESSFULLY COMPLETED ALL CONDITIONS OF PROBATION."

Unless amicus curiae is missing something, this is not a good case for this Court to grant leave to appeal. A published Court of Appeals opinion interpreted a statute in a common sense fashion giving meaning to all of the words, without ignoring a few words as defendant asks this Court to do. A person who has been convicted of violating probation cannot, under any common sense reading, be considered to have "successfully completed all conditions of probation." No need exists to grant leave to appeal.

The Court of Appeals quite correctly stated the appropriate statutory interpretation rules:

> The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. [Citation omitted]. Statutory language should be construed reasonably, keeping in mind the purpose of the act. [Citations omitted]. Nothing will be read into an unambiguous statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. [Citation omitted]. Courts may not speculate over the probable intent of the Legislature beyond the language expressed in the statute. People v Sessions, 262 Mich App 80, 84; 684 NW2d 371 (2004).

It then correctly decided this case. The phrase "[t]he person has successfully completed all conditions of probation," MCL 750.224f(1)(c), cannot either sensibly or logically be interpreted to include a person who has been convicted of violating probation. After all, how can someone who violated probation be said to have successfully completed all

conditions of that probation?

Defendant's interpretation misses one very crucial point - the difference between successfully completing probation and successfully completing all of the terms of probation. Defendant, of course, successfully completed probation. The statute, however, does not say "successfully completed probation." Instead, it says "successfully completed all conditions of probation." As the Supreme Court recently stated in Leocal v Ashcroft, 543 US ___; 125 S Ct 377, 384; 160 L Ed 2d 271 (2004), the Court "must give effect to every word of a statute wherever possible." Defendant's interpretation does not give effect to all the words. He erases "all conditions of" from the statute. Although a person who has been convicted of violating probation can in fact be considered to have successfully completed probation, he cannot be considered to have "successfully completed all conditions of probation."

A look at Texas' felon possessing a firearm statute, Tex P C 46.04(a)(1), illustrates this point. If the Legislature did not want the result that the words gave, it could very easily have chosen different words. Texas in fact did use different words: "After confinement and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later." Unlike Michigan, Texas has an automatic restoration (though limited) of the right to possess a firearm. Michigan, of course, could easily have done so. It could easily have used precisely the same language (or similar language). It could have said "after the person is discharged from probation or parole." It chose not to. It also could have said "successfully completed

probation." It also chose not to do this course either. It instead chose the statute's language, "has successfully completed all conditions of probation." Defendant's interpretation erases crucial words.

On the other hand, for what it is worth, Michigan's statute is actually not particularly draconian. A random sampling, six other jurisdictions, shows that Michigan actually has, overall, the most lenient statute. Florida's statute, FS 790.23(1), is the most draconian. Any one convicted of a felony has his right to own a gun cut off forever unless his civil rights have been restored. Unlike Michigan, which defines "felony" as a four-year offense, Florida defines it as a one-year offense.

New Jersey, NJS 2C:39-7, Ohio, ORC 2923.13(a), and Pennsylvania, 18 PaCS 6105(a)(1), although restricting "felony" to only specified offenses, also have no cut off date. In other words, unlike in Michigan, a person convicted of a violent offense in New Jersey, Ohio, or Pennsylvania may never own a firearm (unless he has had his civil rights restored).

In addition, the federal statute, 18 USC 922(g)(1), also has no cut off date. Not only does it too define "felony" as being over a year, but it forbids anyone, forever, from holding a gun (unless his civil rights have been restored).

Even Texas has a more draconian statute. Unlike Michigan, which has a three year cut off for some felonies and a five year cut off for others, Texas has a five year cut off for all felonies. Then, unlike Michigan, after the five years is up, Texas allows a felon to possess a gun only in his home. Tex P C 46.04(a)(2).

Therefore, interpreting Michigan's statute as the Court of Appeals did in its

published opinion does not render any undue hardship on any one. Michigan gives convicted felons more chances to regain the right to possess a gun than any of the randomly selected States mentioned above.

Last, since the Court of Appeals' opinion is published, it binds both that court and all lower courts. MCR 7.215(C)(2). In effect, it has as much binding authority on Michigan courts as any one of this Court's opinions. (It necessarily binds every court but this Court.) Therefore, if that Court was right, then no need exists for this Court to grant leave to appeal. As that court correctly interpreted the statute, in its most common sense fashion, its opinion does not need review.

RELIEF

ACCORDINGLY, amicus curiae asks this Court to deny this application for leave to appeal.

Respectfully submitted,

January 20, 2005

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